Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Liau Nyun Fui

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-69 OF 1989
ABDUL HAMID OMAR LP, MOHAMED AZMI AND GUNN CHIT TUAN SCJJ
10 DECEMBER 1990

Preventive detention — Restricted residence — Arrest and detention of person — Delay in making restriction order — Restriction order should be made with all convenient speed — Interpretation and General Clauses Ordinance 1948, s 38 — Interpretation Act 1967, s 54(2) — Restricted Residence Enactment (FMS Cap 39), ss 2 & 3

Words and Phrases — 'Thereafter'

In this case the Deputy Minister of Home Affairs had issued an order for the arrest and detention of the respondent pursuant to s 2(1) of the Restricted Residence Enactment (FMS Cap 39). The deputy minister was satisfied that it was not necessary to hold an inquiry under s 2(1) of the Enactment as upon written information and documents he had reasonable grounds for believing that the respondent should be required to reside in another area, namely, Bandaran Tapah, Daerah Batang Padang, Perak. The respondent was arrested and detained at Kota Kinabalu on 6 May 1989. On 17 June 1989 the deputy minister issued a restriction order under ss 2(ii) of the Enactment restricting the respondent to Bandaran Tapah for a period of three years commencing 17 June 1989. The order was served on the respondent at Kota Kinabalu and on 18 June 1989 he was transferred to Bandaran Tapah. On application to the High Court the learned judicial commissioner [see [1990] 2 MLJ 240] concluded that there was an unreasonable delay in the issue of the restriction order for which there was no explanation acceptable to the court and he declared the restriction order to be null and void. The appellants appealed to the Supreme Court.

Held, dismissing the appeal:

(1) The learned judicial commissioner had not adopted a proper approach in determining the question before him on the basis of unreasonable delay. The question that was before him was whether the deputy minister in the particular circumstances of the case had acted with all convenient speed in making the restriction order. Strictly it was for the respondent to show that the deputy minister had not so acted and not for the deputy minister to provide an explanation acceptable to the court.

(2) Notwithstanding that the learned judicial commissioner had erred in his approach in determining the question before him, the court was unable to say that in the particular circumstances of the case the learned judicial commissioner had arrived at a wrong decision.

(3) In the circumstances of this case, especially as the deputy minister had made a firm decision that it was not necessary to hold any further enquiry, there was no explanation as to why he had to wait six weeks to make the restriction order and he had therefore not acted with all convenient speed in the matter.

[Bahasa Malaysia summary

Di dalam kes ini Timbalan Menteri Hal Ehwal Dalam Negeri telah mengeluarkan perintah untuk penangkapan dan tahanan responden di bawah s 2(1) Enakmen Kediaman Terhad (FMS Bab 39). Timbalan menteri itu telah berpuashati tidak perlu diadakan siasatan di bawah s 2(1) Enakmen itu oleh kerana dari maklumat bertulis dan dokumen-dokumen beliau mempunyai alasan yang munasabah untuk mempercayai bahawa responden hendaklah diperintah tinggal di tempat yang lain, iaitu Bandaran Tapah, Daerah Batang Padang, Perak. Responden telah ditangkap dan ditahan di Kota Kinabalu pada 6 Mei 1989. Pada 17 Jun 1989 timbalan menteri itu telah mengeluarkan perintah sekatan di bawah s 2(ii) Enakmen itu menyekatkan responden duduk di Bandaran Tapah untuk masa tiga tahun dari 17 Jun 1989. Perintah itu telah disampaikan kepada responden di Kota Kinabalu dan pada 18 Jun 1989 ia telah dipindahkan ke Bandaran Tapah. Apabila permohonan dibuat ke Mahkamah Tinggi (sila lihat [1990] 2 MLJ 240), yang arif pesuruhjaya kehakiman telah memutuskan terdapat kelengahan yang tak munasabah di dalam mengeluarkan perintah sekatan dan tidak ada apa-apa sebab yang boleh diterima diberi dan beliau telah mengisytiharkan perintah sekatan itu batal dan tak sah. Perayu telah membuat rayuan ke Mahkamah Agung.

Diputuskan, menolak rayuan itu:

(1) Yang arif pesuruhjaya kehakiman telah mengambil pendekatan yang tidak tepat untuk memutuskan persoalan di hadapannya atas alasan terdapat kelengahan yang tak munasabah. Persoalan di hadapannya adalah sama ada timbalan menteri itu di dalam keadaan tertentu kes ini telah bertindak dengan seberapa cepat mungkin di dalam mengeluarkan perintah sekatan itu. Sebetulnya terpulang kepada responden menunjukkan bahawa timbalan menteri itu tidak bertindak sedemikian dan bukan timbalan menteri itu yang perlu memberi penjelasan yang boleh diterima oleh mahkamah.

(2) Sungguhpun yang arif pesuruhjaya kehakiman itu telah tersilap di dalam pendekatan untuk memutuskan persoalan di hadapannya, mahkamah tidaklah boleh berkata bahawa di dalam keadaan tertentu kes ini pesuruhjaya kehakiman itu telah membuat keputusan yang salah.

(3) Di dalam keadaan kes ini, oleh kerana timbalan menteri telah membuat keputusan muktamad bahawa tidak perlu diadakan apa-apa siasatan lanjutan, tidak ada penjelasan diberi apa sebabnya beliau perlu menunggu enam minggu untuk membuat perintah sekatan itu dan oleh kerana itu beliau terdapat tidak bertindak dengan seberapa cepat mungkin di dalam perkara itu.]

Cases referred to

1 *Assa Singh* v *Menteri Besar, Johore* [1969] 2 MLJ 30 (refd)
2 *Andrew s/o Thamboosamy* v *Superintendent of Pudu Prison, Kuala Lumpur* [1976] 2 MLJ 156 (refd)
3 *Tan Boon Liat* v *Menteri Hal Ehwal Dalam Negeri & Ors* [1977] 2 MLJ 108 (refd)
4 *Timbalan Menteri Hal Ehwal Dalam Negeri* v *Cheow Siong Chin* [1988] 1 MLJ 432 (refd)
5 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (distd)
6 *Teoh Lean Fatt* v *Timbalan Menteri Hal Ehwal Dalam Negeri* (High Court OS No 31-379-88) (unreported) (refd)
7 *Phua Hing Lai* v *Timbalan Hal Ehwal Dalam Negeri* [1990] 1 MLJ 173 (refd)

Legislation referred to

Interpretation Act 1967 s 54(2)
Interpretation and General Clauses Ordinance 1948 s 38
Restricted Residence Enactment (FMS Cap 39) ss 2, 3

Appeal from: Originating Summons No 24-628 of 1989 (High Court, Ipoh)

Suriyadi bte Halim Omar (Senior Federal Counsel) for the appellants.

Karpal Singh for the respondent.

Cur Adv Vult

Abdul Hamid Omar LP (delivering the judgment of the court): This was an appeal by the appellants — Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia, Ketua Polis Negeri Perak, Ketua Polis Daerah, Batang Padang, Perak and the Government of Malaysia, against the order made by Ong See Seng JC declaring the order by the Timbalan Menteri Hal Ehwal Dalam Negeri (timbalan menteri) restricting the plaintiff to Bandaran Tapah, Daerah Batang Padang, Perak to be null and void and of no effect. [See [1990] 2 MLJ 240.]

We heard the appeal and dismissed it. We indicated that we would give a written decision at a later date. We do so now.

The appellants' grounds of appeal were set out in the memorandum of appeal as follows:

(1) The learned judicial commissioner has erred in law and in fact in holding that there has been unreasonable delay in the issue of the restriction order.
(2) The learned judicial commissioner has erred in concluding that there is no evidence before the court as to why the order of restriction could not be issued earlier than 17 June 1989.
(3) The learned judicial commissioner has erred in ruling that encl 8 should be disregarded and has failed to scrutinize fully the evidence adduced in court.

Briefly the facts are that on 27 January 1989 the timbalan menteri issued an order for the arrest and detention of the plaintiff Liau Nyun Fui pursuant to s 2(i) of the Restricted Residence Enactment (FMS Cap 39) ('the Enactment') on the ground that he (the plaintiff) was a promoter of illegal 4-Digit Lottery in Sandakan. The timbalan menteri was satisfied it was not necessary to hold an enquiry under s 2(i) of the Enactment as upon written information and documents he had reasonable grounds for believing that the plaintiff should be required to reside in another area, namely, Bandaran Tapah, Daerah Batang Padang, Perak.

On 6 May 1989, the plaintiff was arrested and detained at Kota Kinabalu, Sabah. On 17 June 1989, the timbalan menteri issued a restriction order under s 2(ii) of the Enactment restricting the plaintiff to Bandaran Tapah for a period of three years commencing 17 June 1989. The order was served on the plaintiff at Kota Kinabalu. On 18 June 1989 he was transferred to Bandaran Tapah.

The learned judicial commissioner stated that the plaintiff's case rested on two grounds, namely, (1) the restriction order restricting the plaintiff to Bandaran Tapah on 17 June 1989 was not complied with strictly and (2) there was no justification for a continued detention of the plaintiff for the period commencing 7 May 1989 to 17 June 1989.

As for the first ground, the learned judicial commissioner said that Mr Karpal Singh did not press it in view of the explanation given by Ag ASP Yap Hock Lee in his affidavit affirmed on 13 September 1989.

As for the second ground, the learned judicial commissioner was of the view that 'the arrest and detention of the plaintiff on 6 May 1989 and his continued detention until 17 June 1989 had to be in accordance with the law'.

The learned judicial commissioner found that there was no evidence before him as to why the restriction order could not be issued earlier than 17 June 1989 considering the fact that the plaintiff had been in detention since 6 May 1989. In arriving at his finding, he considered a number of authorities, inter alia, *Assa Singh* v *Menteri Besar, Johore*;[1] *Andrew s/o Thamboosamy* v *Superintendent of Pudu Prison, Kuala Lumpur*;[2] *Tan Boon Liat* v *Menteri Hal Ehwal Dalam Negeri & Ors*;[3] *Timbalan Menteri Hal Ehwal Dalam Negeri* v *Cheow Siong Chin*;[4] and *PP* v *Koh Yoke Koon*.[5]

The first three are Federal Court decisions while the last two are decisions of this court. A common thread which runs through these cases is the fundamental principle that no person shall be deprived of his personal liberty save in accordance with law (see art 5(1) of the Federal Constitution).

In the instant case the learned judicial commissioner concluded that there was an unreasonable delay in the issue of the restriction order for which there was no explanation acceptable to the court.

He referred to the affidavit by the timbalan menteri affirmed on 19 October 1989 where the timbalan menteri stated he was satisfied it was not necessary to hold an enquiry under s 2(i) or further enquiry under s 2(ii) of the Enactment.

In this appeal there was no dispute as to the validity of the order of arrest and detention but what is being challenged is the validity of the continued detention of the plaintiff for the period commencing the day after the arrest up to the date of the issue of the restriction order on 17 June 1989.

At the inception of the hearing in the court below Mr Karpal Singh submitted that there was no justification for the unreasonable delay in the issue of the restriction order on 17 June 1989 as a period of six weeks had elapsed after the plaintiff had been arrested and detained.

The plaintiff's case was that there was unreasonable delay and the timbalan menteri must therefore provide

explanation acceptable to the court. A failure to do so would render the detention illegal and the order null and void.

The senior federal counsel appearing for the defendants argued that it was for the plaintiff to satisfy the court that his detention under s 2(i) of the Enactment was illegal. He submitted that the timbalan menteri was not obliged to issue the restriction order immediately as Form A in the Schedule to the Enactment clearly states that detention shall be until such further order from the minister. He further submitted that an investigation had to be carried out and various statements had to be recorded and all that had to be done in Sabah.

At this point, it is useful to summarize the learned judicial commissioner's finding as follows:

(a) that the arrest and continued detention of the plaintiff must be in accordance with law;
(b) to be in accordance with law, there should not be any unreasonable delay in the issue of the restriction order after the arrest and detention;
(c) that in this case there was no reason why the restriction order could not be issued earlier as the plaintiff was in detention;
(d) that there was in this case an unreasonable delay;
(e) there was no explanation acceptable to the court for the delay;
(f) that in view of the foregoing the plaintiff's restriction on the authority of the restriction order issued by the timbalan menteri was null and void and of no effect;
(g) that the plaintiff was not obliged to comply with the restriction order.

It is to be observed that the learned judicial commissioner did not specifically decide whether the detention of the plaintiff during the relevant period was rendered unlawful. All that he said was that there was unreasonable delay on the issue of the restriction order and then proceeded to declare the restriction order null and void and of no effect.

It is also to be observed that the learned judicial commissioner had placed some reliance on the decision of this court in *PP* v *Koh Yoke Koon*[5] and was apparently swayed by the decision of VC George J in *Teoh Lean Fatt* v *Timbalan Menteri Hal Ehwal Dalam Negeri & Ors.*[6] In that case VC George J held that:

> Although s 3 does not prescribe time limit, it cannot but be that each of the various steps to be taken pursuant to this section and the implementation of each of the consequential orders made pursuant thereto had to be effected within a reasonable time.

In *Koh Yoke Koon*'s case[5] the respondent (Koh) was arrested under the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Under s 3 of that Ordinance a person arrested and detained pending enquiries may be detained in police custody for a period not exceeding 60 days. The 60 days expired on 13 December 1986. The respondent was however detained in the Muar Police Station until sometime the morning of 16 December. The court held that under the detention order the respondent was to be detained at the Pulau Jerajak Rehabilitation Centre and nowhere else and therefore the period 14 December 1986 until the morning of 16 December the respondent could not be said to be in lawful custody or detention.

In that case the court observed that a detention not in accordance with law is inconsistent with the fundamental right guaranteed under art 5(1) of the Constitution. The court further observed that 'where a law deals with detention, there are abundance of authorities to show that the provision of such a law must be construed strictly and in the case of doubt the court should lean in favour of the subject (*Andrew s/o Thamboosamy* v *Superintendent of Pudu Prison, Kuala Lumpur*)'.

It is significant to note that in the instant case we are dealing with a different enactment and therefore special attention must be directed to the provisions of that enactment. And it is pertinent to note that what is said to be unlawful here is the detention subsequent to the arrest and detention order under s 2(ii) of the Enactment.

The learned judicial commissioner was of the view that the timbalan menteri had no reason to delay making the order under s 2(ii) and since he did the onus to explain the delay was on the timbalan menteri to show that the delay was not unreasonable. This the learned judicial commissioner said the timbalan menteri had failed to do.

First the law. We refer to s 2(i) and (ii) of the Enactment which for convenience is reproduced below:

> (i) Whenever it shall appear to the Minister on such written information and after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular district or mukim or should be prohibited from entering into any particular district or districts or mukim or mukims the Minister may issue an order in one of the Forms in the Schedule for the arrest and detention or, if he is already in prison, for the detention of such person.
>
> (ii) The Minister thereafter after such further enquiry as he may deem necessary may make an order in the Form in the Schedule that from a date to be stated in such order, such person do reside in such district or mukim as may be specified in the order or do not enter into such district or districts or mukim or mukims as may be so specified.

In order to construe the purport and effect of s 2(ii) it is essential that consideration be given to the decision of this court in *Phua Hing Lai* v *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors*[7] where the Chief

Justice, Malaya delivering the judgment of the court had this to say:

> Section 3 of the Enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and 3(ii) are reproduced below:
>
> '3(i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
>
> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.'
>
> It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed then according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.
>
> There is however a time frame given by s 3(ii) of the Enactment imposed by the words 'as soon as may be after action has been taken under sub-s (i)' appearing in that subsection. The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah* v *Superintendent of Prison, Pengkalan Chepa* [1968] 1 MLJ 92.
>
> Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.

Turning to the present case, it seems clear that a time frame is not prescribed under s 2(ii) of the Enactment and the timbalan menteri cannot therefore be said to be imposed with an obligation to make a restriction order within a specified time. The word 'thereafter' used in sub-s (ii) of the Enactment clearly connotes that the timbalan menteri may make a restriction order 'thereafter', that is, some time after making the order of arrest and detention, after such further enquiry he may deem necessary.

Two distinct situations would therefore arise where a restriction order is issued and that is: (1) after a further enquiry (if further enquiry is deemed necessary); and (2) after no further enquiry is deemed necessary.

In the light of the judgment in *Phua Hing Lai*'s case[7] the position in law seems to be that when no time frame is prescribed then anything that shall be done under s 2(ii) shall be done with all convenient speed. Accordingly in respect of situation (1), the further enquiry and the issue of the restriction order shall be effected with all convenient speed. What constitutes convenient speed would depend on the circumstances of each case. And in respect of situation (2), where the timbalan menteri does not deem it necessary for any further enquiry he ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed.

The correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed. The learned judicial commissioner determined the question before him on the basis of unreasonable delay. This was not a proper approach. The question that was before him was whether the timbalan menteri in the particular circumstances of that case had acted with all convenient speed in making the restriction order. Strictly it was for the respondent to show that the timbalan menteri had not so acted and not for the timbalan menteri to provide an explanation acceptable to the court.

Notwithstanding that the learned judicial commissioner had erred in his approach in determining the question before him, we are unable to say that in the particular circumstances of this case the learned judicial commissioner had arrived at a wrong decision in particular having regard to the affidavit evidence before the court.

The timbalan menteri in his affidavit affirmed on 9 October 1989 averred as follows:

> 5 In reply to para 5 of the said affidavit, I admit that I issued the order dated on 17 June 1989 which is annexed herewith and marked as exh 'MIMA 3'.
>
> 6 (1) After carefully scrutinizing the relevant written information and documents, I was satisfied that it was not necessary to hold an inquiry under s 2(ii) of the said Enactment.
>
> (2) After being satisfied from the said information and documents that there were reasonable grounds for believing that the plaintiff should be required to reside in Bandaran Tapah, Daerah Batang Padang, Perak Darul Ridzuan, I made the said order.

The timbalan menteri had made a firm decision that it was not necessary to hold any further enquiry under s 2(ii) of the Enactment. All he did was to scrutinize the information and documents, presumably in respect of those he already had in his possession at the time he issued the order for the plaintiff's arrest and detention. There was thus nothing to show that the timbalan menteri had to scrutinize new information or documents other than those he had already scrutinized before making the order under s 2(ii). There was also nothing to show that he caused further statements to be recorded or further documents to be taken possession of after the order under s 2(i). Why therefore did he have to wait six weeks to make the restriction order?

The learned senior federal counsel argued that the timbalan menteri was not obliged to issue the restriction order immediately after the order of arrest and detention under s 2(i). We do agree indeed we are not about to say that he was so obliged. He further argued that investigation had to be made and various statements had to be recorded and all these had to be effected in Sabah. If that had been the case all that was needed for the timbalan menteri to do was to say so in the affidavit. And if he had done that the onus would have rested on the person contending that the timbalan menteri had not so proceeded to satisfy the court that the timbalan menteri had not acted with convenient speed.

In consideration, it is our judgment that though the learned judicial commissioner had been erroneous in his reasons for the decision the decision itself was not an erroneous decision. For the reasons stated we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Haji Sarip bin Hamid & Anor v Patco Malaysia Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-7 OF 1990
LEE HUN HOE CJ (BORNEO), MOHAMED AZMI AND GUNN CHIT TUAN SCJJ
29 NOVEMBER 1990

Labour Law — Claim made to Industrial Court — Claimant director and general manager of company — Allegation that he was dismissed by company — Preliminary objection that he was not a workman — Ruling that claimant as general manager was a workman — High Court setting aside ruling of Industrial Court and dealing with merits of case — Industrial Relations Act 1967, s 20

In this case the first appellant had joined the respondent company as general manager and he was subsequently made a director. He sought the approval of the board of directors for the sale of his shares in the company. The board of directors approved the sale but subject to the conditions that he resigned from his post as general manager and also as a director of the company. The first appellant sent a letter resigning from his post of general manager and director effective three months from 30 May 1986. The board of directors decided to accept his resignation as general manager and director with immediate effect and to pay all his dues. The first appellant claimed that the dues had not been paid to him and he wrote to the company that unless his dues were paid or he was reinstated as general manager he would consider himself dismissed from the company. He later applied to the Industrial Court and a preliminary objection was raised that he was not a workman within the meaning of s 20(1) of the Industrial Relations Act 1967. The Industrial Court ruled that the first appellant as general manager came within the definition of 'workman' in the Act. An application for certiorari was made to the High Court and this application was allowed by the judge of the High Court who held that the ruling by the Industrial Court that the first appellant was dismissed was clearly perverse. The appellants appealed.

Held, allowing the appeal:

(1) The Industrial Court in this case had only decided on the preliminary objection and had not gone into the merits of the matter which had been adjourned for hearing.

(2) The learned judge had therefore decided on matters which have yet to be decided by the Industrial Court. He held that the first appellant had not been dismissed but had resigned voluntarily on 30 May 1986. In doing so he departed from the judicial review of the threshold jurisdiction of the Industrial Court into examining the substantive merits of the case (jurisdiction in the broad sense) on the matter of the dismissal claim pending before the Industrial Court.

[Bahasa Malaysia summary

Di dalam kes ini perayu pertama telah mula bekerja dengan syarikat responden sebagai pengurus am dan kemudiannya ia telah dilantik sebagai pengarah. Ia telah memohon kelulusan lembaga pengarah untuk menjual sahamnya di dalam syarikat itu. Lembaga pengarah telah meluluskan penjualan itu atas syarat ia meletakkan jawatannya sebagai pengurus am dan juga sebagai pengarah syarikat itu. Perayu pertama telah menghantar surat perletakan jawatannya sebagai pengurus am dan sebagai pengarah berkuatkuasa tiga bulan dari 30 Mei 1986. Lembaga pengarah telah memutuskan menerima perletakan jawatannya serta merta dan membayar kepadanya semua haknya. Perayu pertama mendakwa haknya itu tidak diberi kepadanya dan ia telah menulis kepada syarikat mengatakan jika haknya tidak dibayar atau ia diberi balik jawatannya sebagai pengurus am ia akan menganggap ia telah dipecat dari syarikat itu. Kemudiannya ia telah membuat permohonan kepada Mahkamah Perusahaan dan bantahan permulaan telah dibuat bahawa beliau bukan seorang 'pekerja' mengikut makna yang diberi oleh s 20(1) Akta Perhubungan Perusahaan 1967. Mahkamah Perusahaan telah memutuskan bahawa perayu pertama itu sebagai pengurus am termasuk di dalam takrif 'pekerja' di dalam Akta itu. Permohonan certiorari telah dibuat ke Mahkamah Tinggi dan permohonan itu telah dibenarkan oleh hakim Mahkamah Tinggi yang berpendapat bahawa keputusan Mahkamah Perusahaan bahawa perayu pertama telah dipecat adalah menyalahi undang-undang. Perayu-perayu telah membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) Mahkamah Perusahaan di dalam kes ini telah hanya memutuskan mengenai bantahan permulaan dan belum lagi membincangkan merit kes itu yang telah ditangguhkan untuk perbicaraan.

(2) Oleh kerana itu nampaknya hakim yang arif telah membuat keputusan atas perkara-perkara yang belum diputuskan oleh Mahkamah Perusahaan. Beliau berpendapat perayu pertama tidak dipecatkan akan tetapi telah meletakkan jawatannya dengan sukarela pada 30 Mei 1956. Apabila beliau membuat keputusan demikian, beliau telah menyimpang dari penyemakan kehakiman bidangkuasa permulaan Mahkamah Perusahaan kepada memeriksa merit yang benar-benar wujud di dalam kes itu (bidangkuasa di dalam makna yang luas) berkenaan soal pemecatan yang menanti keputusan di Mahkamah Perusahaan.]